96TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT No. 96-311

PROTECTING ARCHAEOLOGICAL RESOURCES OWNED BY THE UNITED STATES, AND FOR OTHER PURPOSES

JUNE 28, 1979.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 1825]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 1825) to protect archaeological resources owned by the United States, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, beginning on line 3, strike all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Archaeological Resources Protection Act of 1979".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) there resources are increasingly endangered because of their commerical attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which

are public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under unifrom regulations promulgated pursuant to this Act. Such regulations shall include, but not not be limited to: pottery, basketry, bottles, weapons, weapon projectiles (other than arrowheads and bullets), tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, nonfossilized and fossilized paleontological specimens, or portion or piece of any of the foregoing items when found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary or the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" mans—

(A) lands which are publicly owned and administered as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system : and

(B) all other lands the fee title to which is held by the United States other than lands on the Outer Continental Shelf.

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, or any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

EXCAVATION AND REMOVAL

SEC. 4. (a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(1) the applicant is qualified, to carry out the permitted activity,

(2) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,

(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) The activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Secretary of the Interior, before issuing such permit the Secretary shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6. Any such permit may be revoked by such Federal land manager uopn assessment of a civil penalty under section 7 against the permittee or upon the permittee's conviction under section 6.

(g)(1) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431) for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this section.

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 (16 U.S.C. 431–433) for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906, shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before the date of the enactment of this Act which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

CUSTODY OF RESOURCES

SEC. 5. The Secretary of the Interior may promulgate regulations providing for—

(1) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 (16 U.S.C. 469–469c) or the Act of June 8, 1906 (16 U.S.C. 431–433).

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

PROHIBITED ACTS AND CRIMINAL PENALTIES

SEC. 6. (a) No person may excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4, a permit referred to in section 4(h)(2), or the exemption contained in section 4(g)(1).

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the provision contained in subsection (a), or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance or permit in effect under State or local law.

(d) Any person who knowingly violates, or counsels, procures, solicits or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than 1 year, or both: *Provided however*, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $5,000, such person shall be fined not more than $20,000 or imprisoned not more than one year, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on the date of the enactment of this Act.

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to an archaeological resource which was in the lawful possession of such person prior to the date of the enactment of this Act.

CIVIL PENALTIES

SEC. 7. (a)(1) Any person who violates any prohibition contained in a regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under the subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed an amount equal to double the cost of restoration and repair of resources and archeological sites damaged and double the fair market value of resources destroyed or not recovered plus $1,000 in the case of a first violation, or $2,000 in the case of a second or subsequent violation.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such a person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty,

the Federal land manager may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. In such action, the validity and amount of such penalty shall not be subject to review.

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) shall be conducted in accordance with section 554 of title 5 of the United States Code. The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, open application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

REWARDS; FORFEITURE

SEC. 8. (a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay an amount equal to one-half of any penalty assessed under section 7, but not to exceed $1,500, to any person who furnishes information which leads to the finding of civil violation with respect to which such penalty was assessed. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) All archaeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(1) such person's conviction of such violation under section 6,

(2) assessment of a civil penalty against such person under section 7 with respect to such violation, or

(3) a determination by any court that such archaeological resources, vehicles, or equipment were involved in such violation.

(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 involve archaeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

CONFIDENTIALITY

SEC. 9. (a) Information concerning the nature and location of any archaeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 of the United States Code or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(1) further the purposes of this Act or the Act of June 27, 1960 (16 U.S.C. 469–469c), and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(b) Notwithstanding the provisions of subsection (a), upon the written request of the Governor of any State, which request shall state—

(1) the specific site or area for which information is sought,

(2) the purpose for which such information is sought,

(3) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

REGULATIONS; INTERGOVERNMENTAL COORDINATION

SEC. 10. (a) The Secretaries of the Interior, Agriculture and Defense, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and the after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996).

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a), as may be appropriate for the carrying out of his functions and authorities under this Act.

COOPERATION WITH PRIVATE INDIVIDUALS

SEC. 11. The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

(1) private individuals having collections of archaeological resources and data which were obtained before the date of the enactment of this Act, and

(2) Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

SAVINGS PROVISIONS

SEC. 12. (a) Nothing in this Act shall be construed to repeal, modify or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3(1).

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

REPORT

SEC. 13. As part of the annual report required to be submitted to the specified committees of the Congress pursuant to section 5(c) of the Act of June 27, 1960 (74 Stat. 220; 16 U.S.C. 469–469a), the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act (relating to cooperation with private individuals).

Amend the title so as to read:

A bill to protect archaeological resources on public lands and Indian lands, and for other purposes.

PURPOSE

The purpose of H.R. 1825 [1] as reported by the Committee on Interior and Insular Affairs is to provide protection for archaeological resources found on public lands and Indian lands of the United States. The legislation provides civil and criminal penalties for those who remove or damage archaeological resources in violation of the prohibitions contained in the bill. The bill prohibits the removal of archaeological resources on public lands or Indian lands without first obtaining a permit from the affected Federal land manager or Indian Tribe.

BACKGROUND

The basic statute protecting archaeological resources on public lands is the Antiquities Act of 1906 (16 USC 431–433). That Act provides that "any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument or any object of antiquity situated on lands owned or controlled by the Government of the United States without the permission of the Secretary . . . shall upon conviction, be fined in a sum of not more than five hundred dollars or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment. . . ."

In a 1974 decision, the United States Court of Appeals for the Ninth Circuit held that the 1906 Act was unconstitutional. The court found that the definitional portion of the Act was unconstitutionally vague; therefore, the Act is legally unenforceable in the Ninth Circuit. The Ninth Circuit includes the states of Arizona, California, Nevada, Oregon, Washington, Montana, Idaho, Alaska, Hawaii and Guam.

That court decision, coupled with the dramatic rise in recent years of illegal excavations on public lands and Indian lands for private gain, prompted Members of the House and Senate to introduce legislation intended to provide adequate protection to archaeological resources located on public lands and Indian lands.

Much has changed since the 1906 Act was passed. The commercial value of illegally obtained artifacts has substantially increased and the existing penalties under the 1906 Act have proven to be an inadequate deterrent to theft of archaeological resources from public lands.

[1] H.R. 1825 was introduced on February 1, 1979, by Representative Morris K. Udall, and was also sponsored by Representative Rhodes, Seiberling, Clausen, Lujan, Runnels, Rudd, Marriott, Ullman, and Hammerschmidt.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

Section 2. Sets forth the findings and purposes of the legislation.

Section 3. Includes the definitions of terms used in the Act.

Paragraph 1 includes a definition of the term "archaeological resource". This definition has been included, in part, to address the problem of unconstitutional vagueness, created by the lack of definition, found by the United States Court of Appeals for the Ninth Circuit *U.S.* v. *Dias*, 449 F. 2d 113 (9th Cir. 1974). Provision has also been made to allow the Secretary of the Interior to promulgate a definition of this term under uniform regulations. Concern was expressed during full Committee deliberation that the definition of "archaeological resource" could be construed to include virtually any object found on the public lands. Amendments were adopted to ensure that only artifacts of true archaeological interest, at least 100 years of age, will be considered to be "archaeological resources" for the purposes of this legislation. Such items as coins, and bottles are clearly not intended to come under the purview of this Act unless found within an archeological site. The Committee has included language in its amendment of the bill to ensure that arrowheads and bullets found on the surface of the ground will not be considered as archaeological resources. The Committee is also concerned that the penalties contained in this bill will only be used in situations that clearly warrant an enforcement action. It is the recognition of the importance of the integrity of the archaeological site and the context in which archaeological resources are found that the Committee feels should guide land managers in their protection and enforcement efforts.

Paragraph 2 includes a definition of the term "Federal land manager".

Paragraph 3 includes a definition of the term "public land" to include all lands actually owned by the United States other than lands on the Outer Continental Shelf. No privately owned lands within the exterior boundaries of a Federal land holding would be included. The Committee recognizes that it is often difficult to delineate public land from private or state land on the ground, particularly in the West. The Committee also realizes that many of the specific archaeological sites on public lands are currently unknown; therefore, specific signs around sites will not be required. The Committee does, however, urge Federal land managers to carry out an active public information program and to publish the appropriate prohibitions and warnings in their respective brochures, maps, visitor guides, and to post signs at entrances to public lands.

Paragraph 4 includes a definition of "Indian lands" to mean lands of tribes or individual Indians either held in trust by the United States or subject to a restriction on alienation.

Paragraph 5 includes a definition of the term "Indian tribe".

Paragraph 6 includes a definition of the term "person".

Paragraph 7 includes a definition of the term "State".

Section 4. This section describes the method by which archaeological resources may be legally excavated and removed from public lands and Indian lands.

Paragraph (a) provides that any person may apply to the appropriate Federal land manager for a permit to excavate or remove archaeological resources from public lands or Indian lands. Any application shall include, among other items that may be deemed necessary by the land manager, information concerning the time, scope, and location and specific purposes of the proposed work.

Paragraph (b) describes the terms and conditions under which permits may be given by the Secretary to any applicant.

Subparagraph (b)(1) requires that the applicant be qualified to carry out the proposed activity. The Committee intends that only individuals with adequate professional expertise (education, experience, or both) in archaeology be considered as eligible to receive permits.

Subparagraph (b)(2) requires that the activity to be undertaken will be for the purpose of furthering archaeological knowledge in the public interest.

Subparagraph (b)(3) requires that all archaeological resources removed from public lands and copies of the associated records and data will remain the property of the United States and be preserved in a suitable location, such as a museum or university. The Committee intends that archaeological specimens removed be adequately evaluated and the knowledge obtained used for scientific and educational purposes. The subsequent storage or display of these artifacts should not, however, be narrowly construed and may include private as well as public museums or institutions which have adequate resources to protect the artifacts and to provide a public, educational, or interpretive service.

Subparagraph (b)(4) requires that any activity carried out under this Act be consistent with applicable land mangement plans for the specified area and consequently would not be in conflict with any laws governing the area in question or the agency managing it. This section is included with recognition that the science of archaeology, in the modern sense, is as much concerned with the conservation and protection of archaeological resources "in situ" as it is with the excavation and removal of specified archaeological resources. The protection of the integrity of an archaeological site is extremely important in that the scientific value to society—the unraveling of the secrets of the past—may be enhanced by not altering archaeological sites. A determination by the land manger as to the wisdom of allowing an applicant to excavate archaeological resources should take these factors into consideration.

Paragraph (c) provides that if a permit application is for the excavation of a site determined by the Secretary of the Interior to be an Indian religious or cultural site, the Secretary is required to notify any Indian Tribe which may consider the site as having religious or cultural importance, prior to issuing a permit.

Paragraph (d) provides that the land manager may impose such terms and conditions in any permit as the land manager deems necessary to carry out the provisions of this Act.

Paragraph (e) requires that one individual be named in each case as the person responsible for carrying out the terms and conditions of the permit. This section was included with the recognition that, in

many instances, "teams" of archaeologists from universities or museums are involved in one excavation, and in order to ensure that such excavations are conducted properly, one individual out of the group will be identified as responsible for the group compliance with the permit and applicable law.

Paragraph (f) provides the Federal land manager with the authority to suspend any permit if he believes that the permittee has violated any of the prohibitions of section 6. The land manager is also given the authority to permanently revoke any permit if a permittee has been assessed a civil penalty under section 8 or has been convicted under section 7.

Subparagraph (g)(1) provides that no tribe or member thereof is required to get a permit from the Secretary to excavate on their tribal lands. However, in the absence of tribal law regulating excavation or removal of archaeological resources on their lands, an individual tribal member must obtain a permit under this Act.

Subparagraph (g)(2) requires the consent of a tribe or individual Indian, as the case may be, for all permits for excavation on Indian lands.

Paragraph (h) meshes existing laws with the provisions of this Act.

Subparagraph (h)(1) ensures that an individual who receives a permit to excavate or remove archaeological resources under this Act shall not be required to obtain an additional permit under the 1906 Antiquities Act.

Subparagraph (h)(2) ensures that an individual who has an existing permit under the 1906 Antiquities Act before the date of enactment of this Act shall not be required to obtain an additional permit under this Act.

Paragraph (i) waives the applicability of section 106 of the National Historic Preservation Act of 1966 (80 Stat. 917, 16 USC 470f) to activities undertaken pursuant to this Act.

Paragraph (j) provides that any Governor may request a Federal land manager to issue a permit for archaeological research, excavation, removal and curation from federal lands to such Governor or any person the Governor deems to be qualified. Upon such request, the Federal land manager shall issue a permit.

Section 5. This section provides the Secretary of the Interior with the authority to establish regulations pertaining to the management and disposition of archaeological resources removed pursuant to this Act, the 1906 Antiquities Act, or the Archaeological Recovery Act of 1960, as amended.

Paragraph (1) permits the Secretary to promulgate regulations providing for the exchange of archaeological resources between suitable and appropriate bodies.

Paragraph (2) permits the Secretary to promulgate regulations providing for the permanent curation or disposal of archaeological resources removed from public lands or Indian lands.

This section further provides that any regulations governing the exchange or ultimate disposition of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the tribe or individual Indian involved.

Section 6. This section describes those activities which would be prohibited by this Act. It prohibits on public or Indian lands the excavation, removal, alteration or defacement of archaeological resources except in accordance with permits or exemptions; prohibits dealing in those resources which are excavated or removed illegally, and precludes the sale and transportation in interstate or foreign commerce when the resources are involved in violations of State or local law.

This section also provides criminal penalties for those who knowingly commit one of the prohibited acts. This is a general intent crime, and therefore a person could be convicted if he acted of his own volition and was aware of the acts he was commiting. The Committee is aware that these penalties overlap with more general statutes and regulations, and there is no intent to preclude action under those general provisions relating to the protection of Federal property under appropriate circumstances.

The Committee recognizes that many individuals and institutions may possess artifacts or collections of archaeological resources which have been obtained legally. Section 6(f) provides an exemption from the prohibitions on sale, purchase, exchange, etc. in such instances. The Committee notes, however, that archaeological resources which are in a person's possession illegally, are not covered by this exemption.

Field casting of paleonotological specimens on the public domain has not been and is not intended to be prohibited by any section of this legislation. Such activities are presently carried out under separate authority of the local land managing bureau which has immediate jurisdiction over the land in question.

Section 7. This section provides civil penalties for those who violate regulations or permits issued under this Act, and it sets up administrative procedures for imposing those penalties. Civil penalties may be as high as twice the value of the archaeological resource involved, and double the cost of restoration and repair of the site involved, plus $1,000 in case of a first violation and $2,000 in case of any subsequent violation. Hearings must comply with title 5 USC section 554, and on judicial review the Federal land manager's action must be sustained if supported by substantial evidence.

This section is intended to give Federal land managers a strong enforcement authority, short of criminal sanctions, by which illegal activities on the public lands may be deterred. However, the Committee does not intend the civil penalties authorized to be used to harass citizens in their normal use of the public lands or to impose heavy penalties on persons who inadvertently violate regulations in a minor way. The regulations promulgated should take these factors into account.

Section 8. This section provides rewards to persons furnishing information leading to the finding of a civil violation. The reward may be equal to half of the penalty assessed under section 7. Section 7 also provides for forfeiture of archaeological resources, vehicles, and equipment involved in violations of section 6, but it is expected that the courts and the administrative law judges would exercise their discretion to avoid unduly burdensome forfeitures of property belonging to persons who neither know nor could have known of the illegal activities.

Section 9. This section stipulates the conditions under which the confidentiality of the location of archaeological resources on public lands and Indian lands can be maintained without violating the provisions of the Freedom of Information Act.

Paragraph (a) provides that information concerning the nature and location of archaeological resources may be withheld from the public unless (1) such disclosure would further the purpose of this Act, or the Archaeological Salvage Act of 1960, as amended; or (2) such disclosure would not create a risk of harm to the archaeological resources involved.

Paragraph (b) provides for the Governor of any State to receive information concerning the nature and location of archaeological resources within said State from the appropriate land manager if the written request from the governor contains (1) the specific site or area for which information is sought; (2) the purpose of the request, and (3) a commitment by the Governor that the confidentiality of the information will be adequately preserved in order to protect the resource from commercial exploitation.

Section 10. Subsection (a) requires intergovernmental coordination and adequate public participation, including participation by official Indian tribes, prior to issuance of uniform regulations under this Act by the Secretaries of Interior, Agriculture, and Defense.

Subsection (b) requires each Federal land manager to promulgate rules and regulations, consistent with the uniform rules and regulations promulgated under subsection (a) as may be necessary to carry out his responsibilities under this Act.

Because in many parts of the country public land management is "checkerboarded", i.e. divided among a variety of different agencies, the Committee feels it is vital that a set of uniform regulations, easily comprehendable to the public, be promulgated for all public lands. The Committee also realizes that conditions may vary from situation to situation, so provision has been made for each Federal land manager to promulgate additional rules and regulations so long as they are consistent with the overall uniform rules and regulations.

Section 11. This section encourages the Secretary of the Interior to foster increased coordination and cooperation between professional archaeologists, Federal personnel responsible for managing archaeological resources, and private individuals with private collections, and other individuals interested in the science of archaeology. The Committee is concerned that greater efforts must be undertaken by the Secretary and professional archaeologists to involve to the fullest extent possible non-professional individuals with existing collections or with an interest in archaeology. The potential benefit of this increased cooperation is enormous; there is a wealth of archaeological information in the hands of private individuals that could greatly expand the archaeological data base of this country. The Committee is convinced that the key to success of a program of this nature is true cooperation between all parties concerned.

Section 12. This section assures that the Act will not be construed to impose significant additional restrictions on the activities permitted under existing multiple use laws and authorities relating to the public lands. Activities such as mining, mineral leasing, grazing, timber har-

vesting, flood control, recreation, reclamation and other construction projects on public or Indian lands, or which are Federally assisted, are required under provisions of existing laws and regulations to take steps to identify and protect or salvage archaeological resources. The Committee does not intend by this Act to alter the provisions of existing law nor does it intend to create any additional significant barriers which would inhibit authorized uses of public lands.

Paragraph (b) ensures that the private collection of rocks, coins, or minerals which are not considered archaeological resources will not require a permit under this Act for such activity.

Paragraph (c) ensures that this Act shall not be construed to affect any land other than public land or Indian land to affect the lawful recovery, collection or sale of archaeological resources from lands other than Indian lands or public lands.

Section 13. This section requires the Secretary to submit, as a distinct, separate component of the report required under section 5(c) of the Archaeological Recovery Act, a section detailing the activities carried out pursuant to the provisions of this Act, including efforts made to foster increased cooperation with private individuals pursuant to section 12 of this Act. The report shall also include such recommendations, including legislative recommendations, as the Secretary deems appropriate to improve the administration of this Act.

COST AND BUDGET ACT COMPLIANCE

The lands involved in the legislation are entirely Federally owned or Indian lands; therefore any costs incurred would be administrative in nature and are not expected to increase significantly once the current or future expenditures for protection of these resources is assured. The following analysis was received from the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., June 18, 1979.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 1825, the Archaeological Resources Protection Act of 1979, as ordered reported by the House Committee on Interior and Insular Affairs, June 13, 1979.

The bill provides for the protection of archaeological resources on public and Indian lands by prohibiting unauthorized removal or sale of antiquities and outlines a means of assessing penalties to be imposed on violators. Costs incurred by the Federal Government as a result of enactment of this bill will stem from enforcement and administration of the civil penalty process, promulgation of regulations, and the review of applications. Based on information available from the Department of the Interior, it is estimated that these costs will total approximately $4 million for fiscal years 1980 through 1984.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to rule X clause 2(l)(4) of the Rules of the House of Representatives, the Committee believes that enactment of H.R. 1825, as amended, would have virtually no inflationary impact on the the national economy.

OVERSIGHT STATEMENT

In accordance with the Committee's jurisdiction over archaeological resources located on public lands and Indian lands, the Committee on Interior and Insular Affairs would have oversight responsibilities over any action of the Secretary taken to comply with the mandate of the legislation. No recommendations were submitted to the Committee pursuant to rule X, clause 2(b)(2).

COMMITTEE RECOMMENDATION

On June 13, 1979, after adopting amendments to the Subcommittee recommendation, the Committee on Interior and Insular Affairs, meeting in open session, reported H.R. 1825 by voice vote and recommends that the bill, as amended, be approved.

DEPARTMENTAL REPORT

The favorable report by the Department of the Interior, dated April 13, 1979, and the comments of the Department of Justice, dated May 22, 1979, follow:

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., April 13, 1979.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to the request of your Committee for the views of this Department on H.R. 1825, a bill "To protect archaeological resources owned by the United States, and for other purposes."

We recommend that H.R. 1825 be enacted if it is amended as described herein.

H.R. 1825 would supplement our authorization to control archaeological excavations on Federally owned or controlled lands, and to remove objects of antiquity from such lands for scholarly purposes. In general, the bill will solve a number of problems in present authorizations and will provide much greater protection of the archaeological resources of the United States.

Specificallly, H.R. 1825 would: (1) be of broader application than the Antiquities Act by allowing the archaeological permits to be issued to any qualified individual or private entity as well as any officer, employee, agent, department or instrumentality of the United States or a

State or political subdivision thereof; (2) define "archaeological resource" as any material remains of past human life or activities which are at least 50 years of age and of archaeological interest; (3) set forth certain qualifications to be met by permit applications and the conditions under which the appropriate Secretary could either refuse to issue a permit or suspend or revoke issued permits; (4) prohibit commercial trade in archaeological resources obtained in violation of Federal, State or local laws; (5) authorize the appropriate Secretary to assess civil penalties, subject to judicial review, for violations of the prohibitions contained in the bill or regulations or permits; (6) provide greatly increased criminal penalties for violations of the prohibitions contained in the bill (up to $20,000 fine or two years imprisonment, or both, for a first offense and up to $100,000 fine or five years imprisonment, or both, for second and subsequent offenses versus a maximum $500 fine or 90 days imprisonment, or both, for violations of the 1906 Act); (7) authorize the appropriate Secretary to recommend the payment of up to ½ of any fine or civil penalty, but not more than $2500, to any person furnishing information leading to the finding of a civil violation or criminal conviction; (8) direct the Secretary of the Interior to report to the Congress by June 1, 1980, on the regulation of the excavation and removal of archaeological resources from Indian lands; (9) provide a specific exemption from the Freedom of Information Act for site location information concerning archaeological resources covered by the bill, unless the appropriate Secretary found the disclosure of this information would further the purposes of the bill and not create risk of harm to the resources or the site location; (10) authorize the Secretary of the Interior, after consultation with other land management departments, to promulgate the rules and regulations to be followed by all such departments in carrying out the purposes of the bill; and (11) require the Secretary of the Interior to report annually to the Congress on the activities carried out by him under the bill.

This Administration wholeheartedly endorses the purposes of H.R. 1825. In recent years, the Antiquities Act of 1906, 16 U.S.C. 431–433, has had the application of its criminal sanctions severely circumscribed. The result has been a corresponding decrease in the effectiveness of its protection of archaeological resources on Federal lands. The most severe problem is the holding in *United States* v. *Diaz*, 499 F.2d 113 (9th Cir. 1974), that the criminal penalty provisions of the Antiquities Act are unconstitutionally vague. Another problem is that in light of the increased commercial trade in archaeological treasures, the penalties provided in the Act are insufficient to provide the deterrent effect necessary to protect these resources. Finally, we have found it increasingly a problem that information on permit applications and other cultural resource information, particularly relating to site location, must be released under the Freedom of Information Act, leading to an increased threat of vandalism of archaeological sites.

This bill reflects the need demonstrated by these problems for a new comprehensive statute to deal with each of these issues. It provides a much clearer direction as to what resources Congress intends to be protected, and specifically grants to the Secretary of the Interior regulatory authority to further define those resources. This would over-

come the vagueness problem of *Diaz*. It also provides for a full range of enforcement tools running from civil penalties to felony provisions for particularly serious offenses. An additional facet is that it makes criminal the commercial trade in archaeological resources which were obtained in violation of either Federal, State, or local law. While recognizing that the problem of proof of how the object was initially obtained is a difficult one, we support this additional layer of protection for the valuable resources which would be protected by this bill. These two aspects of the bill would significantly improve the effectiveness of the cultural resources protection program of this Department.

Finally, the bill would provide a specific exemption from the Freedom of Information Act for site location information regarding archaeological resources covered by the bill, unless the Secretary finds that the release of such information would further the purposes of the bill and would not create a risk of harm to such resources or the site in which they are located. While this provision would be a positive step, we would suggest that it is unnecessary and, probably unintentionally, limited. Because the only archaeological resources covered are those on Federal land, where, in the course of cultural resource surveys or other activities required by other laws, information is collected regarding sites not on Federal land, it would not be exempted from release. We believe that this provision should be redrafted to protect information relating to any archaeological site.

We strongly support the overall purposes of H.R. 1825. We would like to recommend, however, a number of amendments to the bill which will eliminate certain problems of language, interpretation and administration. If so amended, we recommend the enactment of H.R. 1825. Our proposed amendments are attached to this report.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

ROBERT HERBST,
Assistant Secretary.

Enclosure.

SUGGESTED AMENDMENTS TO H.R. 1825

1. Section 2(a)(2), page 2:

On line 6, after "resources" insert "which are the property of the United States".

Reason: We believe the bill should make it clear that these archaeological resources are in public ownership.

2. Section 3(1), page 2:

Delete paragraph (1) and insert the following new paragraph:

(1) The term "archaeological resource" means any material remains of past human life or activities which are at least fifty years of age and which are of archaeological interest, as determined under regulations promulgated by the Secretary of the Interior. The Secretary of the Interior shall promulgate regulations under this paragraph after consultation with other Federal land managers, the professional archaeological community, representatives of concerned States and all other interested parties.

Reason: This change will eliminate a partial listing of archaeological resources, which may be confusing. Instead, this can be handled through regulations.

3. Section 3(2), page 3:

Delete lines 13–21 and insert:

> *(2) The term "Secretary" means, except where otherwise specifically provided, the Secretary of the Department or the head of any agency of the United States (as defined by section 551 of Title 5, U.S.C.) having primary management authority over the land concerned.*

Reason: We believe this clarifies the intent of the definition and will also clarify the provisions of the bill where the term is used.

4. Section 3(3), page 3:

Delete all of section 3(3), and insert the following:

> *The term "Indian lands" means lands of Indian tribes or Indian individuals which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.*

Reason: The term "Indian lands" is defined to include all lands within the exterior boundaries of any Federal Indian reservation. This may be somewhat broader than is intended for there are situations in which either private or State owned lands may be included within these boundaries. Also, lands are often held in trust for individuals. The intent of this bill seemingly would be achieved by defining "Indian lands" as suggested.

5. Section 3(4), page 4, line 2:

Between "trust," and "association", insert *institution*,

Reason: Technical amendment.

6. Section 3(5), page 4:

Add new subparagraph (5) as follows:

> *An archaeological survey means a physical inspection, inventory, and/or assessment which has the potential for physically impacting archaeological resources located within a prescribed geographical area.*

Reason: Required to further explain terminology in reference to Sections 4 and 8.

7. Section 3(6), page 4:

Insert a new subparagraph (6) as follows:

> *(6) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.*

Reason: The term "State", which appears several places in the bill, needs to be defined to clarify the application of this bill to land areas which are not strictly States.

8. Section 4, page 4:

Section 4 of H.R. 1825 should be revised as indicated below. We have completely rewritten this section:

EXCAVATION AND REMOVAL FROM FEDERAL LAND

(a) Any person may apply to the Secretary for a permit for archaeological survey, excavation, or removal of any archaeological resources located on land owned or controlled by the United States or to carry out any or all such activities.

(b) A permit may only be issued pursuant to an application under subsection (a) permitting archaeological surveys, excavation, or removal of any archaeological resource, or permitting any or all such activities, if the Secretary to whom such application is made determines, under regulations promulgated by the Secretary of the Interior, that

(1) the research is important to the acquisition of data related to significant archaeological concerns, and

(2) capability exists to recover, analyze, synthesize or disseminate the results of the work; to meet curatorial responsibilities for the archaeological materials and resources removed; and to provide for appropriate preservation measures onsite, and

(3) a work plan is submitted meeting current professional standards (including necessary logistical, financial and project management data) which demonstrates the applicant and principal investigator have sufficient experience and capability to complete the work in accordance with purposes of this Act.

Such permit shall contain such terms and conditions as the Secretary concerned deems necessary (pursuant to regulations promulgated by the Secretary of the Interior) to carry out the purposes of this Act, to insure compliance with other applicable provisions of law, and to protect other resources involved. The Secretary of the Interior shall promulgate interim regulations within 90 days of the passage of this Act and shall promulgate final regulations within one year of the passage of this Act. Promulgation of final regulations under this subsection will occur only after consultation with—

(1) other departments, bureaus, and agencies of the United States having primary responsibility for management of land owned or controlled by the United States, and

(2) representatives of concerned State agencies.

(c) Systematic collections of archaeological resources and related physical and scientific evidences, archaeological resources with inherent data potential, and associated documentation shall be retained in a manner to assure their scientific integrity. The United States shall retain a proprietary interest in such collection and their conservation for public benefit.

(d) The Secretary to whom an application is made under subsection (a) may refuse to issue a permit under this section to any applicant—

(1) against whom a civil penalty has been assessed under section 6(a) or

(2) who has been convicted of a violation under sections 6(b) or 6(c) or under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433).

Any permit issued under this section may be suspended by the Secretary to whom an application is made for not more than two years for each instance that he determines that the permittee has violated the terms of the permit or the prohibition contained in section 5. Any such permit may be revoked by such Secretary upon assessment of a civil penalty under section 6(a) against the permittee or upon the permittee's conviction of a violation under sections 6(b) or 6(c).

(e) No permit or other permission shall be required under the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431-433) for any activity for which a permit is issued under this section. Nothing in this Act shall modify or affect any existing permit validly issued under the Act of June 8, 1906.

(f) Nothing contained in this section shall require any officer, employee, agent, department or instrumentality of the United States with land management responsibilities to acquire a permit to survey, excavate or remove archaeological resources, provided such activities are a part of the authorized duties of such officer, employee, agent, department or instrumentality of the United States, are undertaken with the consent of the land management agency, and are carried out in accordance with the purposes and intent of this Act, and in accordance with other applicable laws.

(g) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the Act of October 15, 1966 (80 Stat. 917, 16 U.S.C. 470f).

(h) The responsibilities and duties under this Act of any Secretary may, with the consent of the Secretary of the Interior, be delegated to the Secretary of the Interior.

Reason: These recommendations are designed to clarify the policy of the Act by recognizing that archaeological resources are a diminishing resource in this nation today. Archaeological excavation is itself a process of study that destroys the resource. Because of this, and because of Archaeological resources are finite and non-refinable, the objective should be to manage these resources for their long-term conservation while at the same time allowing the necessary consumption of them in the interests of advancing knowledge about the past or to illustrate or interpret to the public and the human history of this nation. The purpose of the recommended changes in this section is to strike a balance between this generation's consumption and of the archaeological resources on Federal lands and the conservation of these resources for future generations when new research problems and advanced research methods of a less destructive nature will be available.

Four additional provisions are recommended for inclusion: (1) to continue in force existing Antiquities Act permits issued under section 3 of the Antiquities Act of 1960; (2) language to clarify that any employee or agent of the Federal government does not need a permit under this act, provided the employee or agent is carrying out authorized, agency-related duties, in accordance with other applicable laws, such as the Archaeological and Historical Preservation Act of 1974 and the Historic Preservation Act of 1966; (3) the compliance with the permitting provision of this act would excuse compliance with

section 106 of the National Historic Preservation Act of 1966; and (4) authorization for any Secretary to delegate to the Secretary of the Interior, where he consents, the authority to issue permits under this act.

9. Section 5(a), page 6:

Delete line 10, and insert in lieu thereof:

SEC. 5. (a) Except as provided in section 4(f), no person may excavate, remove, injure, or destroy any ar-

Reason: Technical amendment to make the language of this section consistent with 16 U.S.C. 433, and to clarify the relationship of this prohibition to the disclaimer in section 4(f).

10. Section 5(b), page 6, line 18, and sec. 5(c) page 7, line 2: Delete "possess,"

Reason: There are Constitutional problems inherent in making the possession of an object a criminal offense in light of the effective date provisions in (d) (2). The deprivation of poverty and due process clauses require that in such a situation the criminal offense be tied to an intervening act. The way the bill is presently drafted, a person possessing an object legally the day before the bill was passed could be put into criminal violation the day the bill became effective. The simplest remedy is to delete possession as a crime. Insofar as overall enforcement is concerned, this deletion does not seem to weaken the bill significantly.

11. Section 5(b) (2), page 6:

Reword paragraph (2) on lines 22–24 to read as follows: "any other Federal law, rule, regulation, or permit."

Reason: Technical amendment.

12. Section 5 (c) and (d) (2), page 7:

Following the word "any" on line 5, reword as follows: *State or local law, ordinance, rule, regulation, or permit.*

On line 15, following the word "any", reword to read *State or local law, ordinance, rule, regulation, or permit or of any other Federal law before, on or after the date of the enactment of the Act.*

Reason: Technical amendment.

13. Section 6(a) (2), page 8, lines 3–14:

We believe that the Congress should set an upper limit on the penalty which may be provided by the Secretary of the Interior. This is the clearest way for the Secretary to establish a system of penalties which most closely reflects the will of the Congress and which, therefore, would withstand judicial review as reasonable. Failure to establish such a ceiling may well result in any system of penalties succumbing to judicial challenge. We feel that under the bill as drafted the Secretary could not impose a civil penalty higher than $20,000, since the maximum fine provided in section 6(b) is $20,000. Because of the extreme value of the properties involved, we believe that both of these figures should be raised to more adequately provide the deterrent we need.

14. Section 6(a) (2), page 8, lines 4 and 10:

Delete the word "guidelines" and insert the word *regulations* in lieu thereof.

Reason: Technical amendment.

15. Section 6(a)(2), page 8, line 12:
Change the word "shall" to *may*
Reason: To provide additional flexibility in the penalty assessment process.
16. Section 6(a)(3):
In lines 17–18, delete "Court of Appeals for the District of Columbia Circuit or for any other circuit in". Insert in lieu thereof: *District Court for the District of Columbia or for any other district in*
Reason: Review of the assessments of civil penalties is well within the province of the District Courts. To allocate the function to the already crowded Circuit Court calendars will only further delay resolution of the civil penalty assessment. Additionally, to require a person against whom a civil penalty has been assessed to seek his relief in the Circuit Court may well discourage meritorious appeals because of the distance to the courts and the expenses involved.
17. Section 6(a)(4) (A) and (B), page 9:
Section 6(a)(4) (A) and (B) should refer to paragraph (3) instead of paragraph (2).
Reason: Technical amendment.
18. Section 6(c), page 9:
Delete all of lines 17–20 and insert in lieu thereof:

> (c) *Any person who commits a second or subsequent violation of any prohibition contained in section 5*

Reason: Technical amendment.
19. Section 7(a), page 9:
In line 24, delete the word "recommendation", and insert in lieu thereof the word *certification*
Reason: Technical amendment. The Department of Treasury indicates that it needs a certification and not just a recommendation.
20. Section 7(a), page 10:
After line 10, insert this sentence:

> *There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this subsection.*

Reason: Without this amendment, funds from a fined person would go to the general fund of Treasury. This amendment would put the money raised from fines into an account for that purpose, so that rewards could be paid out of that account.
21. Section 7(a), page 10, line 6:
Change the word "shall" to *may* and delete the word "equally".
Reason: To allow the Secretary to provide for a division among persons which reflects the value of their contribution to the enforcement effort.
22. Section 7(b)(1), page 10, line 17:
Insert "or (c)" between "6(b)" and ",".
Reason: Technical amendment.
23. Section 8, page 10:
Throughout section 8 of the bill, insert after "Secretary" the words *of the Interior*
Reason: Technical amendment.

24. Section 8(a), page 11, line 5:

Delete the words "proposed legislation designed to allow" and insert the words *consideration of the feasibility of authorizing*

Reason: This amendment gives the Secretary discretion in the study process and does not prejudice the outcome of the study.

25. Section 8(b), page 11, line 10:

Delete the words "drafts of proposed legislation and".

Reason: Same reason as in amendment number 24 above.

26. Section 8(b), page 11, line 12:

Delete "1980" and insert *1982*

Reason: We believe the Indian lands study required by this section will require an additional two years more than allowed the bill.

27. Section 8(c), page 11, line 13:

Delete "After the date of the enactment of this Act", and after "all", insert *archaeological surveys*

Reason: All such archaeological resources are presently protected by the Antiquities Act. This subsection's design is to reinforce in clear language that during the interim time prior to the Secretary's report to Congress, such lands shall continue to receive equal protection under this statute when enacted.

28. Section 8(d), page 11, lines 16–19:

Delete all of section 8(d) and insert in lieu thereof the following:

> *The Secretary shall not issue a permit under this Act with respect to Indian lands if the Indian tribe objects to such issuance and such objections are consistent with section 202 of the Civil Rights Act of 1968 (82 Stat. 77). With respect to permits issued under this Act with respect to Indian lands, the Secretary shall include and enforce terms and conditions in addition to those required by this Act as may be requested by the Indian tribe, consistent with section 202 of the Civil Rights Act of 1968 and other statutory responsibilities.*

Reason: This amendment requires the tribes' objections to be consistent with section 202 of the Civil Rights Act of 1968. In addition, the terms and conditions requested by a tribe should not be inconsistent with other statutory requirements imposed on the Secretary.

29. Section 9, page 12:

Delete all of lines 5–8, and insert the following:

> *SEC. 9. Information obtained by the Federal government under this Act or under any other provision of Federal law concerning the location of any archaeological resource may not be made.*

Reason: We believe that in order to protect archaeological resources site location information regarding any archaeological resources obtained by the government under any law should not be disclosed unless the proper finding is made.

30. Section 9(1), page 12:

In line 13, delete "this" and insert in its place *the relevant*

Reason: Technical amendment.

31. Section 11(a), page 13, line 5:

Delete existing line 5, and substitute *repeal or modify*

Reason: We would suggest that section 11(a), as introduced, might preclude any cultural resource protection under this bill in the context of mining or mineral leasing. To remove such protection completely seems unnecessary. The provisions of the mining and mineral leasing laws can be preserved from modification or repeal, while at the same time giving a reasonable level of protection to cultural resources which might otherwise be endangered.

32. Add new section 11(c) as follows:

(c) A permit under this Act shall not be required when an archaeological survey in compliance with section 106 of the National Historic Preservation Act of 1966 has been made and it has been determined that the subject project will not adversely affect archaeological resources. However, this shall not be deemed to exempt an agency from compliance with this act or the Archaeological and Historic Preservation Act of 1974 when new or additional archaeological resources are discovered.

Reason: To protect private contractors from criminal liability in the event of an inadvertent discovery and/or destruction of an archaeological resource, after there has been agency compliance with section 106.

33. Section 12, page 13, lines 13 and 14:

Delete the words "annually, submit" and insert in lieu thereof the words *as a part of the annual report submitted to the Congress pursuant to section 5(c) of the Archaeology and Historic Preservation Act of 1974 (74 Stat. 220) as amended.*

Reason: We believe a separate report to the Congress should not be required under this bill since an archaeology report is already being submitted annually to the Congress under the 1974 Act, and the reports can easily be consolidated.

DEPARTMENT OF JUSTICE,
Washington, D.C., May 22, 1979.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to proffer the comments of the Department of Justice on H.R. 1825, "To Protect Archeological Resources Owned by the United States, and for Other Purposes."

H.R. 1825 would replace provisions of the Antiquities Act of 1906, 16 U.S.C. 431–433, which require a permit "to excavate or remove any archeological resource located on land owned or controlled by the United States or to carry out both such activities." Proposed Sections 4(a) and 4(d). In addition, the proposed bill would clarify the definition of what activities are to be covered, provide a stricter permitting system for excavation and removal of archeological resources, and provide stronger remedies and penalties for violation of the Act and Department of the Interior regulations.

As is well know, the current Antiquities Act has lost much of its effectiveness. The criminal penalties provision was held unconstitutionally vague in *United States* v. *Diaz*, 499 F. 2d 113 (9th Cir., 1974).

This holding has severely hampered enforcement of current Antiquities Act requirements. Although a recent case in the Tenth Circuit has upheld the constitutionality of the Antiquities Act, the fact remains that most of the sites and objects which require protection are found in the Ninth Circuit where the Act is still considered invalid.

Furthermore, the current penalties provision of the Antiquities Act, 16 U.S.C. § 433, is insufficient to deter unlawful excavation and removal of archeological resources. The value of objects removed from federal lands exceeds many times over the current misdemeanor penalty of $500 or imprisonment for not more than 90 days or both. For many, the risk is well worth running of getting caught in view of such a meager potential penalty.

Because of these severe inroads into the effectiveness of current legislation and the severity of the existing problem, no one can contest that corrective legislation is necessary and should be enacted quickly. We do, however, have a number of reservations to H.R. 1825 as currently drafted. We feel the following issues must be addressed before we can recommend enactment of the bill.

(1) The purpose of the legislation is to allow the Secretary of the Interior to restrict access to "archeological resources" found on all lands "owned or controlled" by the United States. As the bill recognizes, much of the land "owned or controlled" by the United States is held as trustee for Indian tribes or individuals, who have a vested, judicially recognized property interest in such lands. It is our view that the proposed legislation, while acknowledging the politicial interest of Indian tribes, inadequately addresses the problems raised by the fact that archeological sites found on Indian trust or restricted land may be owned by the tribe or individual Indians possessing the beneficial interest in the land.

We assume that much of the "archeological resource" designed to be protected by the legislation is related to Indian culture and is found on Indian reservation lands. Often the Indians not only own such archeological material but, in fact, often are the descendants of those who manufactured it. We suggest therefore that some modifications be considered for Indian tribes.

We concur with the Department of the Interior's proposed changes in the definition of "Indian lands." While the term "Indian country" is statutorily defined so as to include all lands—even those in non-Indian ownership—within the boundaries of a reservation, we question whether non-Indian lands within a reservation should be made subject to this legislation which is directed to federal and Indian lands only. With regard to the other amendments proposed by the Department of the Interior, we believe that these matters are in the purview of their administrative responsibilities and thus defer to them.

We note that in Section (3) (1), the bill requires that the Secretary consult with the states before promulgating regulations. We believe that some consideration should be given to an amendment affording similar consultation rights to affected Indian tribes.

(2) We share the concern of the Department of the Interior reflected in their report on H.R. 1825 concerning the bill's definition of "Archeological Resource". As currently drafted, resources now covered by the Antiquities Act may not be covered under the bill.

We endorse Interior's proposed definition. In order to insure coverage at least as broad as presently exists under the Antiquities Act, such a definition is necessary.

(3) Section 5(a) of H.R. 1825, governing prohibited acts, should use the same wording as § 433 of the current Antiquities Act. Instead of "No person may excavate or remove any archeological . . ." (H.R. 1825), the section should begin "No person may excavate, remove, injure, or destroy any archeological . . ." In the absence of this change, a loophole may be provided allowing damage or injury to archeological resources to occur with impunity.

(4) Enforcement provisions of the statute would be much strengthened by adding authority to seek an injunction. Although such authority can sometimes be implied from general enforcement responsibility and authority, it would be much better to have injunctive relief specifically provided in the statute. We suggest the following wording:

"At the request of the Secretary, or in consultation with the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from violating the requirements of this Act, the regulations issued pursuant to it, or any requirement of a permit issued under this Act."

(5) Throughout Section 6, dealing with penalties, the word "prohibition" should be changed to "requirement." The Act, its regulations, and, in particular, permits issued under the Act, may not contain prohibitions so much as conditions and requirements. To avoid possible future technical disputes over wording of the provision and what is subject to penalties, the wording should be changed.

(6) The legislative history of H.R. 1825 and any future act should specifically state that any criminal penalties provided by Section 6 should be in addition to any criminal sanctions which may be imposed under existing criminal provisions, such as 18 U.S.C. § 641 (theft of government property) or 18 U.S.C. § 1361 (depredation of government property). Although as a matter of departmental policy, we would prosecute all violations of the Act under enforcement provisions of the Act, we should have the Title 18 alternative available, in case any "loopholes" are discovered in the Act.

(7) The Department would oppose any efforts to make violations of Section 5 a specific intent crime by adding the phrase "willfully." As currently dratfed, Section 6(b) makes violation of Section 5 a general intent crime by using the word "knowingly" alone. It should remain this way.

In sum, subject to the above comments, we endorse H.R. 1825.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PATRICIA M. WALD,
Assistant Attorney General.